

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

IVYPORT LOGISTICAL SERVICES,
INC.,

Plaintiff,

v.

CARIBBEAN AIRPORT FACILITIES,
INC., et al.,

Defendants.

Civil No. 06-1980 (JAF)

OPINION AND ORDER

Plaintiff Ivyport Logistical Services, Inc. ("Ivyport") brings the present action against Defendants Caribbean Airport Facilities, Inc. ("CAF"), Cargo-Force-SJU, Corp. ("Cargo"), and Puerto Rico Ports Authority ("PRPA"), seeking injunctive relief enjoining Defendants from repossessing or otherwise interfering with Plaintiff's use of its equipment at the Luis Muñoz Marín International Airport ("the airport"). Docket Document Nos. 1, 2, 4. Defendants move to dismiss,¹ alleging that (1) Plaintiff failed to establish federal question jurisdiction because the federal statutes that Plaintiff sued under do not provide a private cause of action; and (2) Plaintiff's request for injunctive relief has been rendered moot. Docket Document Nos. 11, 13, 16. In the alternative, Defendants assert that we

¹ The motion to dismiss pending before the court challenges only Plaintiff's first amended complaint. Docket Document Nos. 11, 13, 16. Plaintiff filed a second amended complaint on January 17, 2007, listing two additional defendants and new causes of actions. Docket Document No. 37.

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1 should abstain from issuing injunctive relief in this case because
2 Defendant CAF filed several lawsuits against Plaintiff Ivyport in
3 local Commonwealth court and one of the issues being litigated is
4 Defendant CAF's authority to repossess Plaintiff's equipment. Docket
5 Document Nos. 11, 13, 16. For the reasons stated below, we grant
6 Defendants' motion to dismiss.

7 **I.**

8 **Factual and Procedural Synopsis**

9 Unless otherwise indicated, we derive the following factual
10 summary from the parties' filings. Docket Document Nos. 1, 2, 4, 11,
11 13, 14, 16.

12 For almost twenty years, Defendant CAF has leased land at the
13 airport from Defendant PRPA. CAF constructed several warehouses and,
14 in 1997, leased one of them to Swissport International, Ltd.
15 ("Swissport"). In 2002, Swissport was acquired by new owners and
16 renamed Ivyport. Ivyport is engaged in providing passenger and cargo
17 services to various airlines, including the loading and unloading of
18 cargo, and transfer of cargo to its warehouse where it inspects,
19 stores, and processes cargo under United States Customs bonds.

20 At some point, CAF acquired loans that Ivyport had entered into
21 with RG Premier Bank. These loans were secured by the equipment that
22 Ivyport uses to perform its operations. After Ivyport allegedly
23 failed to make its monthly loan payments to CAF, CAF filed a lawsuit
24 in Carolina Superior Court seeking immediate repayment of the loan

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1 and repossession of the equipment given as collateral. CAF also sent
2 Plaintiff a letter dated October 2, 2007, stating that, unless
3 Ivyport paid its debt immediately, CAF would repossess Ivyport's
4 equipment. Plaintiff is seeking injunctive relief to enjoin CAF from
5 repossessing its equipment.

6 Plaintiff is also seeking injunctive relief against Defendants
7 Cargo and PRPA. Defendant Cargo is a company that, like Ivyport,
8 assists airline companies with cargo and other services. According
9 to Ivyport, Defendant Cargo is somehow involved in CAF's plan to
10 interfere with Ivyport's operations. Plaintiff seeks injunctive
11 relief against Cargo to prevent it from participating in this alleged
12 scheme. Defendant PRPA is the administrator of the airport. It is
13 responsible for issuing identification passes, which are required to
14 gain access to secure areas of the airport, including the secure area
15 where Ivyport's equipment is located. Plaintiff seeks to enjoin PRPA
16 from granting CAF access to Ivyport's equipment.

17 Plaintiff filed its complaint for injunctive relief on
18 September 29, 2006, which it amended on October 1, 2006, and then
19 supplemented the following day. Docket Document Nos. 1, 2, 4.
20 According to Plaintiff, its request is urgent because, if CAF
21 repossess its equipment, it will interfere with airport operations.
22 Docket Document Nos. 1, 2, 4.

23 Defendant CAF moved to dismiss on October 12, 2006, Docket
24 Document No. 11, and Defendant Cargo moved to dismiss on October 23,

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1 2006, Docket Document No. 13, asserting essentially the same
2 arguments as CAF. Defendant PRPA joined both of these motions to
3 dismiss. Docket Document No. 16. Plaintiff opposed on October 25,
4 2006. Docket Document No. 14.

5 II.

6 Motion to Dismiss Standard under Rule 12(b)(1)

7 Under Rule 12(b)(1), a defendant may move to dismiss an action
8 against him for lack of federal subject matter jurisdiction. See FED.
9 R. CIV. P. 12(b)(1). The party asserting jurisdiction has the burden
10 of demonstrating its existence. See Skwira v. United States, 344
11 F.3d 64, 71 (1st Cir. 2003) (citing Murphy v. United States, 45 F.3d
12 520, 522 (1st Cir. 1995)).

13 Rule 12(b)(1) is a "large umbrella, overspreading a variety of
14 different types of challenges to subject-matter jurisdiction,"
15 including ripeness, mootness, the existence of a federal question,
16 diversity, and sovereign immunity. Valentin v. Hosp. Bella Vista,
17 254 F.3d 358, 362-63 (1st Cir. 2001). A moving party may mount a
18 "sufficiency challenge," taking the plaintiff's "jurisdictionally-
19 significant facts as true" and requiring the court to "assess whether
20 the plaintiff has propounded an adequate basis for subject-matter
21 jurisdiction." Valentin, 254 F.3d at 363. Alternatively, when the
22 jurisdictional facts are distinct from the case's merits, a moving
23 party can bring a "factual challenge," in which case the court

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1 addresses "the merits of the jurisdictional claim by resolving the
2 factual disputes between the parties." Id.

3 **III.**

4 **Analysis**

5 Defendants move to dismiss, alleging that (1) we cannot exercise
6 federal question jurisdiction over the case because the federal
7 statutes that Plaintiff has sued under do not provide a private cause
8 of action; and (2) Plaintiff's request for injunctive relief has been
9 rendered moot. Docket Document Nos. 11, 13, 16. In the alternative,
10 Defendants assert that we should abstain from issuing injunctive
11 relief in this case because Defendant CAF filed several lawsuits
12 against Plaintiff Ivyport in local Commonwealth court and one of the
13 issues being litigated is Defendant CAF's authority to repossess
14 Plaintiff's equipment. Docket Document Nos. 11, 13, 16.

15 **A. Federal Question Jurisdiction**

16 Defendants CAF and PRPA assert that Plaintiff has failed to
17 establish federal question jurisdiction. Docket Document Nos. 11,
18 16. Plaintiff lists two statutes and their regulations in its
19 amended complaint - the Homeland Security Act of 2002 ("HSA"), 6
20 U.S.C. § 111 (2007), and the Transportation Security Administration
21 Act ("TSAA"), 49 U.S.C. § 114 (2007). Docket Document No. 2.
22 However, Plaintiff has not pointed to a specific provision of either
23 act that provides individuals with a private cause of action to
24 enforce the provisions of the statute. See id.

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1 Section 863 of the HSA provides a private cause of action, but
2 that provision does not apply here as it is limited to specific types
3 of "claims arising out of, relating to, or resulting from an act of
4 terrorism." 6 U.S.C. § 442(a). Otherwise, we have not found, nor
5 has Plaintiff demonstrated, that there is any other explicit or
6 implicit private cause of action upon which this lawsuit may be
7 based. See Dallas County v. City of Selma, No. 05-0350, 2006 U.S.
8 Dist. LEXIS 10055, at *10-17 (S.D. Ala. Feb. 24, 2006) (finding that,
9 aside from section 863, HSA does not provide an explicit or implicit
10 private cause of action).

11 Plaintiff has also failed to point to, and we have not found, a
12 private cause of action in the TSAA that can be used as a basis for
13 this lawsuit. Accordingly, we do not have jurisdiction over this
14 case pursuant to either the HSA or the TSAA. Moreover, even if we
15 could exercise federal question jurisdiction, we find that
16 Plaintiff's claims for injunctive relief have been rendered moot.

17 **B. Mootness**

18 Defendants assert that Plaintiff's claims for injunctive relief
19 enjoining them from repossessing or otherwise interfering with
20 Plaintiff's use of its equipment have been rendered moot. Docket
21 Document Nos. 11, 13, 16.

22 "The mootness doctrine is rooted largely in the idea that
23 courts, because of their distinct institutional competence and role,
24 should not decide abstract questions of law divorced from real

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1 factual controversies." Horizon Bank & Trust Co. v. Massachusetts,
2 391 F.3d 48, 55 (1st Cir. 2004). "A case is moot when the issues are
3 no longer live or the parties no longer have a legally cognizable
4 interest in the outcome." Id. at 53. For example, as in the present
5 case, a case can become moot "because of a change in the fact
6 situation underlying the dispute, making relief now pointless." Id.

7 Plaintiff concedes that the Carolina Commonwealth court issued
8 an order forbidding Defendant CAF from repossessing any equipment
9 without a court order. See Docket Document No. 14 (citing
10 Commonwealth Case No. 05-2382(408)). According to Plaintiff, the
11 order was "dated October 2, 2006 and notified on October 11, 2006."
12 Id.² However, Plaintiff asserts that there is still a risk that
13 Defendant CAF will try to repossess Plaintiff's equipment without a
14 court order and points to CAF's October 2, 2006 letter in support of
15 its contention. Docket Document Nos. 1, 2, 4. We find this argument
16 to be unpersuasive.

17 We have no reason to believe that CAF will not abide by the
18 Commonwealth court's order. In addition, although Plaintiff insisted
19 in its complaint that the threat of repossession was imminent, CAF
20 had not made any attempts to repossess any of Plaintiffs' equipment
21 as of the date of the parties' filings. See Docket Document Nos. 11,

² Because the existence of this order is uncontested, we will consider it, even though a copy of it was not submitted to us, as it should have been.

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1 13, 14, 16. As such, we find that the Commonwealth court's order
2 prohibiting Defendant CAF from repossessing Plaintiff's equipment has
3 rendered Plaintiff's request for injunctive relief moot. Because
4 there is no longer a live controversy, we cannot issue what would
5 essentially be a duplicate order enjoining Defendant CAF from
6 repossessing the Plaintiff's equipment.

7 Having found that we do not have jurisdiction over any of the
8 claims in Plaintiff's first amended complaint, we find it unnecessary
9 to reach the issue of abstention. See Ohio Civil Rights Comm'n v.
10 Dayton Christian Schs., Inc., 477 U.S. 619, 626 (1986) (indicating
11 that a district court must first have jurisdiction over a case before
12 deciding whether Younger abstention applies).

13 IV.

14 Conclusion

15 For the foregoing reasons, we **GRANT** Defendants' motions to
16 dismiss, Docket Document Nos. 11, 13, 16, and **DISMISS** Plaintiff's
17 petition for injunctive relief and first amended complaint, Docket
18 Document Nos. 1, 2, 4, as to Defendants Caribbean Airport Facilities,
19 Inc., Cargo-Force-SJU, and Puerto Rico Ports Authority.

20 In addition, we note that Defendants Caribbean Airport
21 Facilities, Inc., Cargo-Force-SJU, Puerto Rico Ports Authority, and
22 newly-named Defendant Charter America, Inc. have all filed answers to
23 Plaintiff's second amended complaint alleging, inter alia, that
24 Plaintiff's new antitrust claims fail to state a proper cause of

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1 action under federal antitrust law. Docket Document Nos. 51, 53, 54,
2 59. Accordingly, each Defendant is directed to file a FED. R. CIV.
3 P. Rule 56 motion for summary judgment **within twenty (20) days** more
4 fully explaining the reasons why the court does not have subject
5 matter over Plaintiff's antitrust claims. Plaintiff will oppose
6 **within twenty (20) days of the date of the filing of the main motion.**
7 See Celotex Corp. v. Catrett, 477 U.S. 317, 326 (1986) (explaining
8 that district courts can raise issues proper for summary judgment *sua*
9 *sponte*).

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 30th day of May, 2007.

12 S/José Antonio Fusté
13 JOSE ANTONIO FUSTE
14 Chief U.S. District Judge